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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE: ACTOS® (PIOGLITAZONE)
PRODUCTS LIABILITY LITIGATION

MDL No. 6:11-md-2299

JUDGE DOHERTY

This Document Applies To:

*Olivier v. Takeda Pharmaceuticals
USA, Inc., et al*
Civil Action No. 6:13-cv-02003

MAGISTRATE JUDGE HANNA

RULING

Magistrate Judge Patrick Hanna has filed a Report and Recommendation [Rec. Doc. 119; MDL Rec. Doc. 6781] in which he recommends this Court dismiss the claims of plaintiffs Barbara Olivier and R.J. Olivier without prejudice, due to failures to prosecute their case and to comply with the court's rules. For the reasons given below, this Court adopts the Report and Recommendation and dismisses the plaintiffs' claims without prejudice.

As set out in the Report and Recommendation, this suit was filed on behalf of Barbara Olivier and R.J. Olivier, who are currently unrepresented but were previously represented by Mr. Christopher Seeger. In response to Mr. Seeger's motion to withdraw as counsel of record [Rec. Doc. 110], Magistrate Judge Hanna ordered Mr. Seeger and the plaintiffs to appear in Court [Rec. Doc. 111]. The Clerk of Court was unable to serve Mr. Olivier or Ms. Olivier, they did not appear, and another attorney at Mr. Seeger's firm appeared by telephone, rather Mr. Seeger himself. At the hearing, counsel asserted that Ms. Olivier passed away in 2013, that Mr. Olivier indicated his willingness to dismiss their claims that same year, and that counsel had been unable to reach Mr. Olivier ever since [Rec. Doc. 119]. Magistrate Judge Hanna ensured that this Court had the last known contact information for Mr. Olivier, granted the motion to withdraw, and ordered Mr. Olivier to appear a second time or risk a recommendation that his case be dismissed for failure to

prosecute [Rec. Doc. 115]. The Clerk of Court attempted to serve Mr. Olivier again, but there is no indication in the record that service was completed, and Mr. Olivier, again, did not appear as ordered [Rec. Doc. 119].

Given the lack of evidence in the record that Mr. Olivier was served at the address on file with this Court, the lack of forward progress in this matter, and former counsel's assertion that Mr. Olivier had previously indicated a willingness to dismiss his claims, Magistrate Judge Hanna concluded that Mr. Olivier has not kept the court apprised of his current contact information, as required by Local Rule 11.1, that he has failed to prosecute his claims, and/or that he wishes to dismiss his claims. Magistrate Judge Hanna therefore issued a Report and Recommendation, recommending that this Court dismiss this matter without prejudice [Rec. Doc. 119].

The Clerk of Court mailed the Report and Recommendation by first-class mail to Mr. Olivier's last known address on January 23, 2017. Out of an abundance of caution, the Clerk sent the Report and Recommendation again, this time by certified mail, on May 22, 2017. This Court has made all reasonable efforts to ensure service of these documents has been made for the purpose of granting notice, the period for lodging objections to the Report and Recommendation has run, and no objection has been lodged. It has now been more than four months since the Clerk of Court's initial attempt to serve Mr. Olivier by first-class mail to his last known address, and three weeks since the Clerk attempted service by certified mail to the same address, and there has been no response to either.¹ Consequently, this Court dismisses the claims of Barbara Olivier and R.J. Olivier without prejudice.

¹ After the Report and Recommendation was entered, the copy of Magistrate Judge Hanna's order granting the motion to withdraw and ordering Mr. Olivier to appear a second time was returned to the Clerk of Court marked "Return to Sender – Deceased" [Rec. Doc. 121]. This Court is not in receipt of any other information confirming or denying that Mr. Olivier is deceased.

IT IS HEREBY ORDERED the claims of Barbara Olivier and R.J. Olivier are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED a copy of this Ruling be served on R.J. Olivier at his last known address, 1235 Riverwood Drive, Nashville, TN, 37216, *via* certified mail, return receipt requested.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 12 day of June, 2017.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE